

**THE HON'BLE SRI JUSTICE B. PRAKASH RAO
AND
THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN**

WRIT PETITION No. 15142 of 2006

Date: 09.08.2006

Between:

The Director of Treasuries and Accounts, Andhra Pradesh,
Abids, Hyderabad and another.

.... Petitioners

and

Sri A. Ravi.

... Respondent.

**THE HON'BLE SRI JUSTICE B. PRAKASH RAO
AND
THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN**

WRIT PETITION No. 15142 of 2006

ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

The Director of Treasuries and Accounts, A.P. Hyderabad, and the Deputy Director are before this Court, aggrieved by the order of the Tribunal in O.A. No. 2487 of 2006 dated 03.05.2006 whereby the petitioners herein were directed to pass appropriate orders on the disciplinary proceedings initiated against the respondent-applicant, vide charge memo dated 15.02.2005, within a period of six weeks from the date of receipt of a copy of the order, and if, for any reason, no final orders were passed, the petitioners were directed to consider the case of the respondent-applicant for promotion to the post of Sub-Treasury Officer without reference to the pendency of disciplinary proceedings initiated vide charge memo dated 15.02.2005.

Facts, in brief, are that the respondent-applicant was working as a Senior Accountant in the office of the Sub-Treasury office at Bapatla. The 2nd petitioner served charge memo dated 15.02.2005 on him. The respondent-applicant submitted his explanation, in August 2005, after he was furnished a copy of the report of the Regional Joint Director. Aggrieved by the inaction of the petitioners herein and their failure to proceed with the enquiry, and since his promotion to the post of Sub-Treasury Officer was

deferred on the ground of pendency of disciplinary proceedings pursuant to the charge memo dated 15.02.2005, the respondent-applicant approached the Tribunal. In the application, filed by him before the Tribunal, the respondent herein stated that while he stood at Sl.No. 37 in the seniority list of Senior Accountants in Zone-III, and in the normal course ought to have been promoted as Sub-Treasury Officer, ignoring his claims promotions were given upto serial No. 40 thereby causing him prejudice. The respondent-applicant stated that, while he was working as a Senior Accountant at Guntur, he detected a fraud committed by Sri T.V. Ramana, Senior Accountant, and he pointed out the scandal to his superiors. Instead of appreciating his action he was also subjected to disciplinary proceedings along with his predecessor who had worked earlier as a Senior Accountant at Guntur. It is stated that the Regional Joint Director, in the Treasuries Department, who was directed to conduct an enquiry and submit a report, had obtained statements from several persons including the respondent-applicant and had submitted a detailed report on 18.12.2003. Basing on the report of the Regional Joint Director, the 1st petitioner addressed a letter to the Government, which in turn issued U.O. Note dated 24.05.2004 directing initiation of disciplinary action against the erring officials of the department for committing fraud. The respondent-applicant would state that he was issued charge memo dated 15.02.2005 just a day before the Departmental Promotion Committee met, on 16.02.2005, for considering candidates for promotion to the post of Sub-Treasury Officers and the very fact that charge memo was served on him at 8.30 pm on 15.02.2005 demonstrates the malafide intention to deny him consideration for promotion. According to the

respondent-applicant a perusal of the report of the Regional Joint Director dated 18.12.2003 would demonstrate that he was not at fault and it was on the basis of this report that the Education Department was asked to take action against the erring officials of its department. The respondent-applicant contended that, for no fault of his, he was being penalized and while it was the policy of the government to conclude disciplinary proceedings within a period of 2/3 months, in the instant case, though more than 14 months had elapsed, no action had been taken except issuing the charge memo. The respondent-applicant contended that he was being subjected to victimization and harassment and that the action of the petitioners herein was an abuse of the powers vested in them.

While no counter-affidavit was filed by the petitioners herein before the Tribunal, an affidavit is filed along with the writ petition before this Court, wherein it is stated that pursuant to a news item with regards illegal drawal of amounts under the Family Benefit Fund (FBF) and Group Insurance Scheme (GIS) in the name of fictitious persons in the education department in Guntur District, the Regional Joint Director of Treasuries and Accounts was directed to conduct a preliminary enquiry and submit a report. According to the report of the Regional Joint Director, the Senior Accountant working in the office of the District Education Office, Guntur used to put up sanction orders sanctioning FBF and GIS amounts in the name of the Mandal Educational Officers in various Mandals of the District which were approved by the District Education Officer, Guntur. These bills were presented in the District Treasury, Guntur, and on the bills being passed by the Treasury department, the State Bank of India issued bankers

cheque in the names as available in the draft requisition forms. It is stated that the Senior Accountant of the District Education Office had managed to open S.B. accounts in different banks in the names of fictitious Mandal Education Officers, and that a total amount of Rs.21,14,331/- was found to have been fraudulently withdrawn. The employees of the Treasury department did not make any entries, with regards passing of the bills, in the Flyleaves of the concerned employees maintained with the District Treasury at Guntur. The report of the Regional Joint Director gives the names of 12 employees of the District Treasury, Guntur who processed the bills. Accordingly, a criminal case was registered against the Senior Accountant Sri T.V. Ramana, working in District Education office. The Deputy Director, District Treasury, Guntur issued charge memo dated 15.02.2005 against four Senior Accountants working in the office of District Treasury, Guntur who were involved in the admission of G.I.S. and F.B.F claimed in the name of fictitious persons. It was proposed to hold a common enquiry against all the employees. It is stated that the matter relates to forgery, withdrawal of huge amounts in the name of fictitious persons because of the negligence on the part of the employees of the District Treasury, Guntur wherein bills were admitted and consequently huge sums of money, exceeding Rs.21,00,000/-, was drawn by the Senior Accountant in the office of the District Education Officer. It is stated that the Tribunal ought to have granted time to file a counter-affidavit or atleast ought to have called for the records and that the Tribunal had erred in disposing of the O.A. at the stage of admission. It is stated that the respondent-applicant had filed his explanation, six months

after the charge memo was issued, in August 2005, and that he was not entitled to blame the department for the delay in concluding disciplinary proceedings when he himself took more than six months to submit his explanation. It is stated that the disciplinary proceedings could not be concluded, since many employees were involved in these fraudulent and negligent acts and as common proceedings are to be initiated under Rule 24 of the A.P.C.S. (CCA) Rules 1991. It is stated that since the respondent-applicant is facing serious charges of misconduct, in a matter where more than Rs. 21,00,000/- was fraudulently withdrawn, he cannot claim promotion as a matter of right and that there were instructions of the government in this regard to defer considerations of cases of employees for promotion where they were facing charges and disciplinary proceedings were pending against them.

O.A. No. 2487 of 2006 came up for admission on 26.04.2006 and the Government Pleader was directed to get instructions in the matter. A week later on 03.05.2006, the main O.A. itself was taken up for hearing, and disposed of at the admission stage, after the Tribunal recorded that the learned Counsel for the applicant and the learned Government Pleader had requested for disposal of the main O.A. itself and that the learned Government Pleader had sought reasonable time for passing orders on the disciplinary proceedings. The consent of the learned Government Pleader, for disposal of the main O.A. itself, as recorded by the Tribunal, is disputed and an affidavit is filed before this Court, the contents of which read as under:

“I, S. Gangadhara Reddy, S/o S. Venkata Reddy, aged 48 years, Resident of Hyderabad do hereby solemnly affirm and state as follows:

I submit that I am working as Government Pleader for Finance &

Planning, A.P. Administrative Tribunal at Hyderabad and as such I am well acquainted with the facts of the case.

It is submitted that the respondent herein i.e., A. Ravi filed O.A. No. 2487 of 2006 before the Hon'ble A.P. Administrative Tribunal, Hyderabad praying the Hon'ble Tribunal to direct the respondents therein to consider the claim of the applicant for promotion to the post of Sub-Treasury Officer in Zone-III as per his seniority and merit by declaring the action of the respondents in not promoting him solely on the ground of pendency of charge memo issued by the 2nd respondent vide Memo No. 8699/2001/A1 dated 15.02.2005 as illegal, arbitrary, violation of Articles 14, 16 and 21 of the Constitution of India apart from violation of principles of natural justice.

I submit that the matter was taken up on 26.04.2006 and the Hon'ble Tribunal was pleased to direct me to get instructions and the matter was adjourned to 03.05.2006. Again when the matter came up for hearing on 03.05.2006, I requested the Hon'ble Tribunal to grant time; for filing the counter or to get instructions. But the Hon'ble Tribunal did not inclined to grant time. I argued and opposed for disposing the O.A. I also further contended that the instructions issued in Memo No. 82494/Ser.C/GAD dated 28.07.2003 is only guidelines and since the common enquiry was ordered for conducting the enquiry against the individuals, it will take long time to complete the enquiry, which was not recorded by the Hon'ble Tribunal in its order. In spite of my oppose for disposing the O.A, and to grant any relief, the Hon'ble Tribunal was pleased to dispose of the O.A. with an observation that the learned counsel for the applicant and the Government Pleader requested for disposal of the main O.A. itself."

It is a matter of concern that such serious allegations are made against a Member of the Administrative Tribunal by a Law Officer of the State. We do not, however, propose to examine the allegations in the affidavit of the Government Pleader, as filed before us, since the statements of judges, recorded in their judgment, as to what transpired in Court ought not to be permitted to be contradicted by affidavit or other evidence. If the petitioners herein, or their counsel, were of the view that the happenings in Court had been wrongly recorded in the judgment it was incumbent for them to bring these facts to the notice of the Member concerned and to have the record of judicial proceedings corrected.

In **State of Maharashtra v. Ramdas Shrinivas Nayak**^[1],

the Supreme Court observed:-

“..... We are afraid that we cannot launch into an enquiry as to what transpired in the High Court. It is simply not done. Public policy bars us. Judicial decorum restrains us. Matters of judicial record are unquestionable. They are not open to doubt. Judges cannot be dragged into the arena. “Judgments cannot be treated as mere counters in the game of litigation.” We are bound to accept the statement of the Judges recorded in their judgment, as to what transpired in court. We cannot allow the statement of the Judges to be contradicted by statements at the Bar or by affidavit and other evidence. If the Judges say in their judgment that something was done, said or admitted before them, that has to be the last word on the subject. The principle is well-settled that statements of fact as to what transpired at the hearing, recorded in the judgment of the court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence. If a party thinks that the happenings in court have been wrongly recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the Judges, to call the attention of the very Judges, who have made the record, to the fact that the statement made with regard to his conduct was a statement that had been made in error. That is the only way to have the record corrected. If no such step is taken, the matter must necessarily end there. Of course a party may resile and an appellate court may permit him in rare and appropriate cases to resile from a concession on the ground that the concession was made on a wrong appreciation of the law and had led to gross injustice but, he may not call in question the very fact of making the concession as recorded in the judgment.....

..... So the Judges’ record is conclusive. Neither lawyer nor litigant may claim to contradict it, except before the Judge himself, but nowhere else.....”

There is, however another aspect of the matter on which we consider it necessary to pen a few words of caution. Tribunals, created under the Administrative Tribunals Act, adjudicate matters which they are specifically empowered to under the Act. While Tribunals are not entitled to exercise the power of judicial review of legislative action to the exclusion of the High Courts, they perform a supplemental — as opposed to a substitutional — role in this respect. (**L. Chandra Kumar v. Union of India**^[2]). In **Union of India v. Upendra Singh**^[3], the Supreme Court observed:-

“..... It may be recalled that the jurisdiction of the Central

Administrative Tribunal is akin to the jurisdiction of the High Court under Article 226 of the Constitution. Therefore, the principles, norms and the constraints which apply to the said jurisdiction apply equally to the Tribunal.....”

At the stage of Admission, the Tribunal is required to consider whether the averments in the application entitle the applicant to seek the relief prayed for and whether such a relief can be granted. If the Tribunal is of the opinion that a *prima facie* case is made out for granting the relief sought for in the O.A, notice is issued calling upon the person or persons against whom the relief is sought to show cause why such relief should not be granted. If, however, the Tribunal finds that no such *prima facie* case is made out, the O.A. is to be dismissed without issuing notice to the person or persons against whom the relief is sought. The object is to ensure that an O.A. which is frivolous in nature or in which no relief can be granted by the Tribunal is dismissed at the threshold. (**Union of India v. S.P. Anand**^[4]; **Gunwant Kaur v. Municipal Committee, Bhatinda**^[5])).

While a frivolous Application would justify its dismissal at the stage of admission, caution must be exercised while granting relief to the Applicant, at the admission stage, without notice being issued to the respondents. More often than not a request for disposal of the O.A. at the admission stage is acceded to by Courts/Tribunals, without notice being issued to the respondents, on the premise that the relief sought for is innocuous, when a detailed examination of the matter would belie such an assumption. The present case, if the contents of the affidavit filed by the petitioners before us were to be accepted as true, is one

such. In **State of M.P. v. Makers Development Service (P) Ltd.**,^[6] the Supreme Court remanded the matter back to the High Court, in view of the wholly unsatisfactory manner in which the writ petition had been disposed of as the Division Bench of the High Court had disposed of the writ petition before it, even before issuing notice to and calling upon the State Government to file its counter-affidavit.

Judicial discipline is an inbuilt mechanism inherent in the system itself. The Judiciary is the repository of public faith. It is the trustee of the people. The position that Judges occupy and the power they wield requires exercise of self-discipline of a high order. (**Tarak Singh v. Jyoti Basu**^[7]). It is a matter of public policy that justice should not merely be done but should appear to be done. (**Vassiliades Vs. Vassiliades**^[8]). While disposing of an O.A. at the admission stage, when both parties make such a request or give their consent thereto, are matters of discretion of the Tribunal, it needs to be remembered that the emphasis on speedy disposal of cases, cannot and should not result in injustice.

Exercise of the jurisdiction, by Tribunals constituted under the Administrative Tribunals Act, being discretionary, the discretion must be exercised on sound judicial principles, and not as a matter of course. (**Gunwant Kaur**⁷). One of the principles inherent is that, if quashing of an order results in great harm to the society, the Tribunal would, normally, exercise restraint for such discretionary power need not be exercised in every case where there is an error of law. In the name of correcting errors of law a

situation which would result in injustice should not be brought about. The discretionary jurisdiction would not be exercised unless substantial injustice has ensued or is likely to ensue. The Administrative Tribunal would not allow itself to be turned into a court of appeal, against orders passed in disciplinary proceedings, to set right mere errors of law which do not occasion injustice. Exercise of discretionary jurisdiction would be necessitated, mainly, where manifest injustice is caused or is likely to be caused or a substantial question of public importance is involved.

We do not wish to say more.

The Applicant, who approaches the Tribunal, must fully aver and establish his rights flowing from the bundle of facts thereby requiring the respondent to indicate its stand either by denial or by positive assertions. While a point, though not specifically raised in the application filed in the O.A, may be allowed to be raised subsequently at the hearing, when it is a pure question of law, (**Syed Bin Ali Vs. Superintending Engineer, A.P.S.E.B.**^[9]), in the absence of necessary averment in the Application it is not permissible for the Tribunal to arrive at a conclusion on a factual position merely on the basis of submissions made in course of hearing. (**Rani Laxmibai Kshetriya Vs. Chand Behari Kapoor**^[10]).

While disposing of the O.A at the admission stage, the Tribunal relied on the instructions of the government in memo dated 28.07.2003 whereunder an enquiry was required to be completed within three months and in complicated matters within six months. The Tribunal directed the respondent to pass appropriate orders on the disciplinary proceedings within six weeks from the date of

receipt of a copy of the order. The government memo, dated 28.07.2003, on which reliance was placed by the Tribunal, was not even referred to in the Application filed, by the respondent-applicant, before the Tribunal. Unlike statutory provisions or rules made under the proviso to Article 309 of the Constitution of India, the government memo dated 28.07.2003 is in the nature of administrative/executive instructions. The consent given, for disposal of the O.A, at the admission stage, could only have been on the facts as pleaded in the O.A. Since the Government memo dated 28.07.2003 was not referred to, even by the respondent-applicant in his application, the Tribunal ought not to have placed reliance thereupon without an opportunity being given to the petitioners herein to submit as to whether the said memo applied to the case of the respondent-applicant or not. Further the consent, given by the Government Pleader, as recorded in paragraph 3 of the order of the Tribunal, was only for grant of reasonable time for completing the disciplinary proceedings and not with regards the petitioners claim for being considered for promotion to the post of Sub-Treasury Officer, on failure to complete the disciplinary proceedings. In the absence of any consent in this regard, the Tribunal erred in disposing of the O.A. without notice being issued to the respondents in the O.A, (petitioners herein), and without giving them reasonable opportunity of filing their counter-affidavit.

It is contended on behalf of the respondent-applicant that the matter could be disposed of by this Court itself and thereby further delay, which would be caused if the matter were be remanded to the Tribunal, could be avoided. A writ of Certiorari looks beyond the personal rights of the person aggrieved. It is designed to keep

the machinery of justice in proper working order by preventing Tribunals and public authorities from abusing their powers. (**Bar Council of Maharashtra v. M.V. Dabholkar**^[11]). If an error of law apparent on the face of the record is disclosed and a writ of certiorati is issued, the usual course to adopt is to correct the error and send the case back to the Tribunal for its decision in accordance with law. It would be inappropriate for the High Court, exercising its certiorari jurisdiction, to consider the evidence for itself and reach its own conclusions in matters which have been left by the legislature to the decisions of specially constituted Tribunals. (**T. Prem Sagar Vs. The Standard Vacuum Oil Company Madras**^[12]).

The writ petition is allowed. The order of the Tribunal in O.A. No. 2487 of 2006 dated 03.05.2006 is quashed and the O.A. is remanded to the Tribunal for its consideration afresh on merits, in accordance with law, after grant of reasonable opportunity to the petitioners herein, (the respondents in the O.A.), to file their counter-affidavit. No costs.

B.PRAKASH RAO,J

Date: -08-2006

RAMESH RANGANATHAN,J

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[\[1\]](#) (1982) 2 SCC 463

- [\[2\]](#) (1997) 3 SCC 261
- [\[3\]](#) (1994) 3 SCC 357
- [\[4\]](#) (1998) 6 SCC 466
- [\[5\]](#) (1969) 3 SCC 769
- [\[6\]](#) 1994 Supp (3) SCC 90
- [\[7\]](#) (2005) 1 SCC 201
- [\[8\]](#) AIR 1945 Privy Council 38
- [\[9\]](#) 1986 Lab.I.C. 848
- [\[10\]](#) 1998(5) SCALE 226
- [\[11\]](#) (1975) 2 SCC 702
- [\[12\]](#) 1964(5) SCR 1030